

Appendix Exhibit 109

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UNITED STATES BANKRUPTCY COURT FOR THE
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	*	Chapter 11
	*	
	*	Case No. 19-34054sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P.	*	
	*	
Debtor	*	

LIMITED PRELIMINARY OBJECTION TO THE DEBTOR'S MOTION FOR ENTRY OF AN ORDER APPROVING SETTLEMENT WITH UBS SECURITIES LLC AND UBS AG LONDON BRANCH AND AUTHORIZING ACTIONS CONSISTENT THEREWITH

Now into Court, through undersigned counsel, comes The Dugaboy Investment Trust and Get Good Trust ("Objectors"), who file this limited preliminary opposition to the *Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith* ("Motion") [Dkt. #2199]. The limited preliminary objection is being filed so that a contested matter will exist between Highland Capital Management, L.P. (the "Debtor") and the Objectors, thus allowing the Objectors to conduct discovery to ascertain facts and obtain documents in support of the Objectors' limited objection and determine if additional grounds exist for an amended objection.



Objectors and other entities own interests in Highland Credit Opportunities CDO, L.P. (n/k/a Highland Multi Strategy Credit Fund, L.P. (“Multi-Strat”) and, on information and belief, the interests of Objectors and third parties is in excess of any interest owned by the Debtor in Multi-Strat.

Objectors’ issues with the settlement do not revolve around the Debtor settling its claims with UBS Securities LLC and UBS AG London Branch (collectively, “UBS”) but, rather, go to the following issues:

- 1) That the Bankruptcy Court has no jurisdiction to rule on the settlement of litigation between UBS and Multi-Strat. The Debtor’s sole position with the Multi-Strat entities appears to be as an investment advisor and possibly a general partner. The position taken by the Debtor in seeking Court approval for the Multi-Strat portion of the settlement is inconsistent with its previously articulated position taken in its *Debtor’s Response to Mr. James Dondero’s Motion to Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business* (“Response”) (Dkt. #1546) to *James Dondero’s Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business* (“Motion for Future Estate Transactions”) (Dkt. #1439). In the Motion for Future Estate Transactions filed by James Dondero seeking notice and hearing, one of the sales mentioned in the Motion for Future Estate Transactions was the sale of an asset owned by Multi-Strat (See Dkt. #1439).

In its Response, the Debtor stated:

However, the assets of a debtor’s non-debtor subsidiaries are *not* property of a debtor’s estate. *See, e.g., In re Guyana Dev. Corp.*, 168 B.R. 892, 905 (Bankr. S.D. Tex. 1994) (“As a general rule, property of the estate includes the debtor’s stock in a subsidiary but not the assets of the subsidiary.”); *see also*

Parkview-Gem, Inc., 516 F.2d 807, 809 (8th Cir. 1975) (“Ownership of all of the outstanding stock of a corporation, however, is not the equivalent of ownership of the subsidiary’s property or assets. . . Even though the value of the subsidiary’s outstanding shares owned by the debtor may be directly affected by the subsidiary’s disputes with third parties,’ Congress did not give the bankruptcy court exclusive jurisdiction over all controversies that in some way affect the debtor’s estate.”) (citing *In re Beck Indus., Inc.*, 479 F.2d 410 (2d Cir. 1973)).

Further, while the Debtor has certain control rights over RCP, MSCF, and SSPI, those rights do not make the assets of RCP, MSCF, and SSPI property of the Debtor’s estate. *See In re Thomas*, 2020 Bankr. LEXIS 1364 at *31 (Bankr. W.D. Tenn. 2020) (a debtor’s membership interest in an LLC, including both its economic rights and governance rights, became property of the estate on the petition date, but the assets of the LLC remain separate and the debtor must manage them consistent with the terms of the operating agreement and applicable law); *In re Cardinal Indus.*, 105 B.R. 834, 849 (Bankr. S.D. Ohio 1989) (a debtor’s ownership interests and control rights in non-debtor partnerships were property of the estate; but those rights did not make the assets of the partnership property of the estate or implicate the automatic stay so as to prevent secured creditors of the non-debtor partnerships from foreclosing on properties of the partnerships).

The law has not changed since the Response filed by the Debtor and this Court has no jurisdiction to approve the transfer of assets by a non-debtor “affiliated entity” to a third party in settlement of the claims of the third party against the non-debtor.

This position that the Court has jurisdiction over the UBS/Multi-Strat portion of the Settlement Agreement and Motion is also inconsistent with the fact that the Debtor did not seek Court approval for a May 2020 settlement between UBS and Multi-Strat, Highland Credit Opportunities CDO and Highland CDO Asset Holding L.P. Clearly, Highland, as both the Investment Advisor and either General Partner or Managing Member of the entities other than UBS, did not believe the Bankruptcy Court had jurisdiction over the May 2020 settlement identified in the Settlement Agreement attached to the Motion. The status of Debtor, with respect to the Multi-Strat portion of the Motion before this Court, has not changed from its status at the time of the May 2020 Settlement Agreement that was not brought before this Court. It is

also apparent that UBS did not believe that Bankruptcy Court approval was necessary for the May 2020 settlement.

- 2) Whether the Debtor, under the organizational documents of Multi-Strat and its Investment Advisor Agreement with Multi-Strat, possesses the requisite authority to bind Multi-Strat under the terms of the proposed settlement. The Motion fails to identify the authority possessed by the Debtor to bind Multi-Strat and fails to attach the documents giving the Debtor requisite authority to bind Multi-Strat to the proposed settlement. The Motion does not attach exhibits that evidence such authority or even quote portions of such documents giving rise to the Debtor's authority to bind the entity.
- 3) While the Debtor's bankruptcy counsel can advise the Debtor as to the wisdom of the settlement, the Motion fails to state whether a third party other than the Debtor or its counsel rendered an opinion to Multi-Strat and its owners that the settlement between the UBS entities was in the best interests of Multi-Strat. In fact, it is unknown as to whether anyone on behalf of Multi-Strat other than Highland or its counsel was apprised of the Multi-Strat/UBS settlement. Clearly, counsel for the Debtor cannot render such an opinion inasmuch as they do not represent Multi-Strat. While the case against Multi-Strat appears to be based upon transfers made to it, issues between Multi-Strat and the Debtor exist as to whether a portion of the Debtor's payments to the UBS entities reduces the claims by UBS against Multi-Strat under the single recovery rule. For example, if the case against Multi-Strat was brought by the Debtor and the property subject to the unlawful transfer had been transferred by another Highland Fund to Multi-Strat under 11 U.S.C. § 550(d), the Debtor could obtain only

a single satisfaction of the claim. Objectors believe that the interests of Debtor with respect to its own liability to UBS and its bargained for settlement and release for itself, Strand Advisors, Inc. and the list of released third parties place Debtor and its counsel in a conflict of interest position in evaluating the wisdom of the settlement between Multi-Strat and the various UBS entities.

- 4) The portion of the Settlement Agreement that confers exclusive jurisdiction of any dispute between Multi-Strat and UBS is void. It is well settled law that the parties cannot confer jurisdiction where no jurisdiction exists.

Objectors recognize that this Court has jurisdiction under Bankruptcy Rule 9019 of the settlement between the Debtor and UBS. The Court, however, does not have jurisdiction to give res judicata or collateral estoppel effect to a settlement of a dispute between three (3) non-debtors. The Dugaboy Investment Trust and Get Good Trust reserve the right to amend and supplement this objection upon obtaining documents and discovery from the Debtor and possibly UBS.

May 4, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that on May 4, 2021, a copy of the above and foregoing *Limited Preliminary Objection to the Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith* has been served electronically to all parties entitled to receive electronic notice in this matter through the Court's ECF system as follows:

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